IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 7685 of 2004(M)

IA.1472/03 IN OS.212/2000 of ADDL. M.C., KOTTAYAM

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PETITIONER:

RUGMINI KRISHNAN MOOSE,
AGED 66, W/O. KRISHNAN MOOSE, VAYASKARA,
PLAMANTHOL ILLOM, KODIMATHAKARA,
KOTTAYAM VILLAGE AND TALUK.

BY ADV. SRI.T.S.RAJASENAN

RESPONDENTS:

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1. UNNI AGED 48,
S/O. PHILIPOSE UNNI, VAYASKARA CHIRAYIL,
KODIMATHAKARA, KOTTAYAM TALUK.

2. MOHAN AGED 45, S/O. PHILIPOSE UNNI,
VAYASKARA CHIRAYIL, KODIMANTHAKARA,
KOTTAYAM TALUK.

3. THAMPI AGED 43, S/O. PHILIPOSE UNNI,
VAYASKARA CHIRAYIL, KODIMATHAKARA, KOTTAYAM TALUK

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.7685/04

APPENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF PLAINT FILED BY PLAINTIFF DT.7.3.2000.

EXT.P2 – TRUE COPY OF WRITTEN STATEMENTS FILED BY DEFENDANTS DT.19.9.02

EXT.P3 – TRUE COPY OF I.A.1472/03 DT.4.6.03.

EXT.P4 – TRUE COPY OF OBJECTION IN O.S.212/2000 DT.5.6.03.

EXT.P5 – TRUE COPY OF ORDER IN SM.237/2000 DT.10.3.03.

EXT.P6 – TRUE COPY OF ORDER IN I.A.1472/03 IN O.S.212/2000 DT.29.9.03.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.7685 OF 2004

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DATED THIS THE 18TH JUNE, 2007

J U D G M E N T

The plaintiff is aggrieved by Ext.P6 order of the learned Munsiff by which the learned Munsiff has stayed the suit under Section 125(3) of the Kerala Land Reforms Act and referred the question of tenancy raised by respondents for decision by the Land Tribunal.

2. Heard Sri.T.S.Rajasenan., learned counsel for the petitioner and Sri.R.S.Kalkura, learned counsel for respondents.

3. Mr.T.S.Rajasenan submitted that the respondents had applied for purchase of kudikidappu under Section 80B of the Land Reforms Act and had obtained certificate of purchase. Thereafter, one of the respondents even got a suo motu case registered on the basis that he is having cultivating tenancy in respect of the remainder portion. Ext.P5 is relied on to show that even that suo motu case is dismissed. In view of the orders in the applications under Section 80B and in view of Ext.P5, it cannot be said that the issue seriously arises in the suit and since the issue does not seriously arise, there is no warrant for referring the question to the Land Tribunal at all, counsel submitted.

4. Mr.R.S.Kalkura, counsel for the respondents would however support the impugned order.

5. Having considered the rival submissions addressed at the Bar in the light of binding judicial precedents including the judgment of the Supreme Court in **Thomas Antony v. Varkey** (2000 (1) KLT 12), I am of the view that the issue as to whether the respondents are having tenancy rights does not seriously arise for decision in the suit and on that basis I set aside Ext.P6. However, since the learned Munsiff has formulated issues on the basis of the pleadings raised by the defendants, I direct the learned Munsiff himself to try that issue along with other issues and take a decision. It is open to the petitioner to take advantage of the judicial precedents governing the issue in her favour.

The Writ Petition is disposed of as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

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